

per diem and travel expenses of the inspector. A copy of the certificate report shall be sent to the person or persons owning the bees within forty-eight hours of the colony strength inspection.

The colony strength requirement shall be decided on a yearly basis by the director, in cooperation with the apiary board created by section 8 of this 1977 amendatory act.

NEW SECTION. Sec. 10. There is added to chapter 15.60 RCW a new section to read as follows:

Any colony, hive, bees, or any appliances found by the director to be both abandoned and contaminated with disease shall be seized and destroyed by the director in a manner which will prevent the spread of disease.

NEW SECTION. Sec. 11. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the Senate June 17, 1977.

Passed the House June 17, 1977.

Approved by the Governor July 14, 1977.

Filed in Office of Secretary of State July 14, 1977.

CHAPTER 363

[Engrossed Senate Bill No. 2419]

PRIVACY

AN ACT Relating to privacy; amending section 1, chapter 93, Laws of 1967 ex. sess. and RCW 9.73-.030; amending section 4, chapter 93, Laws of 1967 ex. sess. and RCW 9.73.060; amending section 1, chapter 48, Laws of 1970 ex. sess. and RCW 9.73.090; and adding new sections to chapter 9.73 RCW.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 1, chapter 93, Laws of 1967 ex. sess. and RCW 9.73.030 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, ~~((record or divulge))~~ or record any:

~~((1))~~ (a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication;

~~((2))~~ (b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

(2) Notwithstanding the provisions of subsection (1) of this section, wire communications or conversations (a) of an emergency nature, such as the reporting of a fire, crime, or other disaster, or (b) which convey threats of extortion, blackmail,

bodily harm, or other unlawful requests or demands, or (c) which occur anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues, may be recorded with the consent of one party to the conversation.

(3) Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded.

(4) An employee of any regularly published newspaper, magazine, wire service, radio station, or television station acting in the course of bona fide news gathering duties on a full time or contractual or part time basis, shall be deemed to have consent to record and divulge communications or conversations otherwise prohibited by this chapter if the consent is expressly given or if the recording or transmitting device is readily apparent or obvious to the speakers. Withdrawal of the consent after the communication has been made shall not prohibit any such employee of a newspaper, magazine, wire service, or radio or television station from divulging the communication or conversation.

Sec. 2. Section 4, chapter 93, Laws of 1967 ex. sess. and RCW 9.73.060 are each amended to read as follows:

Any person who, directly or by means of a detective agency or any other agent, violates the provisions of ~~((RCW 9.73.030))~~ this chapter shall be subject to legal action for damages, to be brought by any other person claiming that a violation of this statute has injured his business, his person, or his reputation. A person so injured shall be entitled~~((; in addition to other injuries,))~~ to ~~((recover for))~~ actual damages, including mental pain and suffering endured by him on account of violation of the provisions of ~~((RCW 9.73.030))~~ this chapter, or liquidated damages computed at the rate of one hundred dollars a day for each day of violation, not to exceed one thousand dollars, and a reasonable attorney's fee and other costs of litigation.

Sec. 3. Section 1, chapter 48, Laws of 1970 ex. sess. and RCW 9.73.090 are each amended to read as follows:

(1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police and fire personnel in the following instances:

~~((1))~~ (a) Recording incoming telephone calls to police and fire stations ~~((for the purpose and only for the purpose of verifying the accuracy of reception of emergency calls));~~

~~((2))~~ (b) Video and/or sound recordings may be made of arrested persons by police officers responsible for making arrests or holding persons in custody before their first appearance in court. Such video and/or sound recordings shall conform strictly to the following:

~~((a))~~ (i) The arrested person shall be informed that such recording is being made and the statement so informing him shall be included in the recording~~((;));~~

~~((b))~~ (ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof~~((;));~~

~~((c))~~ (iii) At the commencement of the recording the arrested person shall be fully informed of his constitutional rights, and such statements informing him shall be included in the recording(;;);

~~((d))~~ (iv) The recordings shall only be used for valid police or court activities.

(2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official duties to intercept, record, or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: PROVIDED, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communications or conversations with a non-consenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter.

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

All recordings of communications or conversations made pursuant to this subsection shall be retained for as long as any crime may be charged based on the events or communications or conversations recorded.

(3) Communications or conversations authorized to be intercepted, recorded, or disclosed by this section shall not be inadmissible under RCW 9.73.050.

(4) Authorizations issued under this section shall be effective for not more than seven days, after which period the issuing authority may upon application of the officer who secured the original authorization renew or continue the authorization for an additional period not to exceed seven days.

NEW SECTION. Sec. 4. There is added to chapter 9.73 RCW a new section to read as follows:

It shall not be unlawful for the owner or person entitled to use and possession of a building, as defined in RCW 9A.04.110(5), or the agent of such person, to intercept, record, or disclose communications or conversations which occur within such building if the persons engaged in such communication or conversation are engaged in a criminal act at the time of such communication or conversation by virtue of unlawful entry or remaining unlawfully in such building.

NEW SECTION. Sec. 5. There is added to chapter 9.73 RCW a new section to read as follows:

(1) Within thirty days after the expiration of an authorization or an extension or renewal thereof issued pursuant to RCW 9.73.090(2) as now or hereafter amended, the issuing or denying judge shall make a report to the administrator for the courts stating that:

(a) An authorization, extension or renewal was applied for;

- (b) The kind of authorization applied for;
- (c) The authorization was granted as applied for, was modified, or was denied;
- (d) The period of recording authorized by the authorization and the number and duration of any extensions or renewals of the authorization;
- (e) The offense specified in the authorization or extension or renewal of authorization;
- (f) The identity of the person authorizing the application and of the investigative or law enforcement officer and agency for whom it was made; and
- (g) The character of the facilities from which or the place where the communications were to be recorded.

(2) In addition to reports required to be made by applicants pursuant to federal law, all judges of the superior court authorized to issue authority pursuant to this chapter shall make annual reports on the operation of this chapter to the administrator for the courts. The reports by the judges shall contain (a) the number of applications made; (b) the number of authorizations issued; (c) the respective periods of such authorizations; (d) the number and duration of any renewals thereof; (e) the crimes in connection with which the conversations were sought; (f) the names of the applicants; and (g) such other and further particulars as the administrator for the courts may require.

The chief justice of the supreme court shall annually report to the governor and the legislature on such aspects of the operation of this chapter as he deems appropriate including any recommendations he may care to make as to legislative changes or improvements to effectuate the purposes of this chapter and to assure and protect individual rights.

NEW SECTION. Sec. 6. There is added to chapter 9.73 RCW a new section to read as follows:

Each application for an authorization to record communications or conversations pursuant to RCW 9.73.090 as now or hereafter amended shall be made in writing upon oath or affirmation and shall state:

- (1) The authority of the applicant to make such application;
- (2) The identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to record a communication or conversation is sought and the identity of whoever authorized the application;
- (3) A particular statement of the facts relied upon by the applicant to justify his belief that an authorization should be issued, including:
 - (a) The identity of the particular person, if known, committing the offense and whose communications or conversations are to be recorded;
 - (b) The details as to the particular offense that has been, is being, or is about to be committed;
 - (c) The particular type of communication or conversation to be recorded and a showing that there is probable cause to believe such communication will be communicated on the wire communication facility involved or at the particular place where the oral communication is to be recorded;
 - (d) The character and location of the particular wire communication facilities involved or the particular place where the oral communication is to be recorded;
 - (e) A statement of the period of time for which the recording is required to be maintained, if the character of the investigation is such that the authorization for

recording should not automatically terminate when the described type of communication or conversation has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(f) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

(4) Where the application is for the renewal or extension of an authorization, a particular statement of facts showing the results thus far obtained from the recording, or a reasonable explanation of the failure to obtain such results;

(5) A complete statement of the facts concerning all previous applications, known to the individual authorizing and to the individual making the application, made to any court for authorization to record a wire or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each application; and

(6) Such additional testimony or documentary evidence in support of the application as the judge may require.

NEW SECTION. Sec. 7. There is added to chapter 9.73 RCW a new section to read as follows:

Within a reasonable time but not later than thirty days after the termination of the period of the authorization or of extensions or renewals thereof, or the date of the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended, the issuing authority shall cause to be served on the person named in the authorization or application for an authorization, and such other parties to the recorded communications as the judge may in his discretion determine to be in the interest of justice, an inventory which shall include:

(1) Notice of the entry of the authorization or the application for an authorization which has been denied under RCW 9.73.090 as now or hereafter amended;

(2) The date of the entry of the authorization or the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended;

(3) The period of authorized or disapproved recording; and

(4) The fact that during the period wire or oral communications were or were not recorded.

The issuing authority, upon the filing of a motion, may in its discretion make available to such person or his attorney for inspection such portions of the recorded communications, applications and orders as the court determines to be in the interest of justice. On an ex parte showing of good cause to the court the serving of the inventory required by this section may be postponed or dispensed with.

Passed the Senate June 18, 1977.

Passed the House June 18, 1977.

Approved by the Governor July 14, 1977.

Filed in Office of Secretary of State July 14, 1977.